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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 611

ILLA ROUTH ALLEY SCHURINK, PETITIONER

v.

UNITED STATES OF AMERICA, GERTRUDE RHODES ALLEY AND BLUFORD ALLEY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The United States District Court for the Southern District of Alabama rendered no opinion. The opinion of the Court of Appeals for the Fifth Circuit (R. 12) is reported at 177 Fed. 2d 809.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on November 18, 1949 (R. 15). The petition for a writ of

certiorari was filed on February 15, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether 38 U. S. C. 802 (g), prior to the amendment of August 1, 1946, 60 Stat. 781, required the named beneficiary of a National Service Life Insurance policy, who claims as a widow, to be in the status of the wife of the insured at the time of his death rather than only at the time the policy was issued.

2. Whether petitioner's Alabama divorce decree so severed her marital relationship, during the period of 60 days after the decree within which remarriage was prohibited, as to exclude her from the status of a "widow", within the terms of 38 U. S. C. 802 (g), during that period.

STATUTES INVOLVED

The pertinent provisions of the National Service Life Insurance Act of 1940 (Part I, Title VI of the Second Revenue Act of 1940, c. 757, 54 Stat. 974, 1008 *et seq.*, 38 U. S. C. 801-819), prior to and after the amendment of August 1, 1946 (the Insurance Act of 1946, § 4, 60 Stat. 781), and of Ala. Code, Tit. 34 (1940) are set forth in the Appendix, *infra*, pp. 9-10.

STATEMENT

The decedent, Joseph Bluford Alley, was issued two National Service Life Insurance policies while he was in the armed service of the United States

(R. 5-6). Policy No. N-7,714,782 was issued, effective January 1, 1943, in the amount of $5,000 with Illa Routh Alley, the petitioner, designated as principal beneficiary and named as wife (R. 5-6). Policy No. N-5,519,790 was issued, effective February 11, 1943, in the sum of $5,000 with Illa Ruth Alley (also known as Illa Routh Alley) designated as principal beneficiary and named as wife, and Gertrude Rhodes Alley designated as contingent beneficiary and named as mother (R. 6).

Petitioner was granted a decree of divorce from the insured on July 19, 1945, by the Circuit Court of Mobile County, Alabama (R. 6). This decree permitted remarriage by either party but not before sixty days had elapsed after rendition of the decree (R. 7). On August 9, 1945, before the expiration of the sixty day period, the insured died (R. 6).

Petitioner later filed a claim with the Veterans Administration for the proceeds of the National Service Life Insurance policies, as did the intervenors, the parents of the insured; petitioner's claim was denied and the proceeds awarded to the intervenors (R. 7).[1] Because of the denial of the claim petitioner brought suit against the United States for the proceeds of the two policies (R. 2). On motion of the Government and the intervenors (R. 3), the amended complaint was dismissed (R.

[1] The Veterans Administration has advised us that as of August 13, 1948, Gertrude Rhodes Alley, as mother of the insured, has been paid $1,243.45 and Bluford Alley, as father of the insured, has been paid $449.75.

9-10). The judgment of dismissal was affirmed (R. 15) by the Court of Appeals because (1) 38 U. S. C. 802 (g) (prior to the amendment of August 1, 1946) required petitioner to show herself to be the widow of the insured at the time of his death (R. 13), and (2) petitioner was not the "widow" of the insured, under Alabama law, at the time of his death (R. 14).

ARGUMENT

The factual situation presented here is unique and does not call for review by this Court. Ordinarily, in such circumstances the Government does not concern itself with disputes between parties for proceeds of National Service Life Insurance policies and assumes the position of a stakeholder only. See *e.g.*, Memorandum for the United States in *Dorothy May Arnold Davis* v. *Gretchen A. Prose and United States of America*, No. 612, this Term. However, here payments have been made to the intervenors by the Veterans Administration, and the Government actively participated in the controversy in both courts below.[2] Accordingly, we here take the position that the petition should be denied.

1. 38 U. S. C. 802 (g) (prior to the amendment of August 1, 1946, which added the proviso of the present statute, *infra*, p. 9) required that a

[2] Even if it be determined in this action that payments by the Veterans Administration, *supra*, p. 3, should have been made to petitioner rather than to the intervenors, we do not concede that the Government is liable to petitioner for such payments. See 38 U. S. C. 802 (l).

beneficiary of a National Service Life Insurance policy be within a class of permitted beneficiaries at the time of the death of the insured. *Infra,* p. 9. If, as contended by petitioner (Pet. 7), a beneficiary merely need show her former status as wife of the insured at the time the policy was issued in order to recover the proceeds, the use of the term "widow" is singularly inept. That term, obviously, can refer only to a beneficiary in the status of a wife at the time of death of the insured. Further, since Section 802 (g) refers to "insurance" that is "payable", it manifestly refers to the relationship of the beneficiaries to the insured at the time of death when the policy is due and "payable."

Other courts which have passed on this question have also had no difficulty in determining that to qualify as a widow under Section 802 (g) the beneficiary must have been the wife of the insured at the time of death. *Castor* v. *United States,* 174 F. 2d 481, 482 (C. A. 8), certiorari denied, 338 U. S. 836 (the petition did not present this issue); *United States* v. *Snyder,* 177 F. 2d 44, 46 (C.A. D.C.); *Gehm* v. *United States,* 83 F. Supp. 1003, 1005 (S.D. N.Y.); *United States* v. *Layton,* 68 F. Supp. 247, 249 (S.D. Fla.); *Branch* v. *United States,* 83 F. Supp. 641 (W.D. Okla.); *Cf. Cummings* v. *United States,* 34 F. 2d 284, 286 (D. Minn.). Therefore, since petitioner was not a beneficiary within a permitted class at the time of the death of the insured, payments were properly made to Gertrude Rhodes

Alley as a contingent beneficiary under the provisions of policy No. N-5,519,790 and to both intervenors under policy No. N-7,714,782. 38 U.S.C. 802 (i).

Further, Congress has since removed the restriction as to permissible beneficiaries of National Service Life Insurance and the question is no longer one of any importance. Insurance Act of 1946, Sec. 4, 60 Stat. 781, 38 U. S. C. 802 (g). *Infra,* p. 9.[3]

2. The status of the widow of a serviceman under a National Service Life Insurance policy is determined by state law, as the court below recognized (R. 14-15). *Brown* v. *United States,* 164 F. 2d 490 (C. A. 3), certiorari denied, 333 U. S. 873; *United States* v. *Snyder,* 177 F. 2d 44 (C. A. D. C.); *United States* v. *Layton,* 68 F. Supp. 247 (S.D. Fla.). The divorce decree in this action was granted under the authority of Ala. Code, Tit. 34, § 22 (1940), and was an absolute divorce *a vincula matrimonii.* In Alabama, after a decree of divorce the party against whom the divorce

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[3] See S. Rept. 1705, 79th Cong., 2d Sess., p. 4:

Section 4 of the committee amendment amends subsection 602 (g) of the National Service Life Insurance Act of 1940, as amended, by adding a proviso thereto making the provisions of the subsection as to the restricted permitted class of beneficiaries inapplicable to any national service life insurance policy maturing on or after the date of enactment of the bill. * * * any person, firm, corporation, or legal entity may be designated as beneficiary of a national service life insurance policy which matures after the date of enactment of the bill.

decree was given is permitted to remarry only if the decree so states, or if leave is given by a later order. Ala. Code, Tit. 34, § 23 (1940). But in any event, remarriage of either party except to each other is not permitted within a sixty day period from the date of rendition of the decree. Ala. Code, Tit. 34, § 38 (1940). Where property rights are concerned, the divorce decree severs the marital relationship as of the date of issuance, so that thereafter a former spouse has no property rights dependent on the marital relationship in the estate of the other spouse. *Ex parte Jones,* 249 Ala. 386, 388; *Atkinson* v. *Atkinson,* 233 Ala. 125, 126; *Downey* v. *Downey,* 98 Ala. 373; *Torme* v. *Torme,* 251 Ala. 521.

This is so even though the prohibition against remarriage suspends the effect of the divorce decree and renders it "inoperative" (*Vance* v. *State,* 210 Ala. 9, 10; *Brand* v. *State,* 242 Ala. 15), insofar as it relates to a prosecution for bigamy. This distinction between the effective date of a divorce decree as affecting property rights and as affecting a prosecution for bigamy is a holding common to other state courts. *Atkeson* v. *Sovereign Camp, W.O.W.,* 90 Okla. 154; *Durland* v. *Durland,* 67 Kan. 734; *Heflinger* v. *Heflinger,* 136 Va. 289; *Rogers* v. *Hollister,* 156 Wis. 517; cf. *Steele* v. *Steele,* 65 F. Supp. 329 (D.D.C.). It certainly presents no question calling for review by this Court, especially where the interpretation of Alabama law is by a Court of Appeals with jurisdiction over that state,

speaking through a judge from Alabama. *Propper* v. *Clark*, 337 U. S. 472, 486-487; *Estate of Spiegel* v. *Commissioner*, 335 U. S. 701, 707-708; *MacGregor* v. *State Mutual Co.*, 315 U. S. 280, 281.

CONCLUSION

The decision below is correct and accords with the applicable state law. There is no reason for further review. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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MARCH, 1950.

APPENDIX

1. National Service Life Insurance Act of 1940, 54 Stat. 1008, § 602 (g), as amended prior to August 1, 1946, 38 U. S. C. 802 (g) (1942):

> (g) The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent, brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.

2. Insurance Act of 1946, approved August 1, 1946, 60 Stat. 781, § 4, 38 U. S. C. 802 (g) (1949):

> * * * *Provided,* That the provisions of this subsection as to the restricted permitted class of beneficiaries shall not apply to any national service life-insurance policy maturing on or after the date of enactment of the Insurance Act of 1946 [August 1, 1946].

3. Alabama Code, Tit. 34 (1940):

> § 22: *To wife in case of cruelty or nonsupport of husband.*—In favor of the wife when the husband has committed actual violence on her person, attended with danger to life or health, or when from his conduct there is reasonable apprehension of such violence, or when the

wife has lived, or shall have lived separate and apart from the bed and board of the husband for two years and without support from him for two years next preceding the filing of the bill; and she has bona fide resided in this state during said period.

§ 38: *Right of parties to remarry after divorce* —When a decree has been rendered granting a divorce in this state, the court shall decree that neither party shall again marry except to each other until sixty days after decree rendered, and that if an appeal is taken within sixty days, neither party shall again marry except to each other during the pendency of said appeal.

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